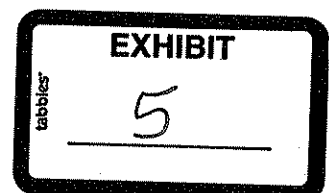


DECLARATION OF DAVID C. HOWARD

1. My name is David Howard and I am licensed to practice law in the states of Missouri and Tennessee. From 1971 until 1976, I served as staff attorney, managing attorney and litigation director for Memphis Area Legal Services Association. In 1976, I relocated to St. Louis to join the faculty of St. Louis University School of Law and to become litigation director and eventually executive director of the National Center for Youth Law, a Legal Services Corporation support center that merged with its offices in San Francisco in 1982. Since that time I have been engaged in the private practice of law in the St. Louis metropolitan area.

2. I am a member of the federal bars of the Eastern District of Missouri, the Western District of Tennessee and the U.S. Courts of Appeal for the Sixth, Seventh, Eighth, Ninth and Tenth Circuits, and the U.S. Supreme Court. I have co-authored and contributed to a number of legal treatises and law review articles and have lectured and presented CLE programs in numerous states on civil rights and employment discrimination jurisprudence. I have been a member of the St. Louis branch of the National Employment Lawyers Association for many years.

3. My area of concentration has been civil rights litigation with an emphasis the past twenty-five years on civil rights and plaintiff's-side employment discrimination law. I have successfully litigated numerous federal class actions and have lectured on this topic throughout the United States in CLEs and as a consultant for the United States Department of Justice and a number of other agencies. I have served on the adjunct faculty at St. Louis University School of Law and at Washington University School of Law where I supervised law student externs from the Employment Law Clinic. I have authored a number of law review articles and treatises and I served on the Bar Association of Metropolitan St. Louis (BAMSL) Labor Law Section



Committee that drafted the Model Civil Rights In Employment Jury Instructions for the Eighth Circuit (1989).

4. Because my practice routinely includes making applications for fee awards under various fee-shifting statutes, I monitor court-ordered attorney fee awards throughout the Missouri federal and state courts. In 2002, the standard hourly rate for plaintiff-side civil rights attorneys in this area with qualifications similar to Eric Sowers was \$400 per hour. For example, Mary Ann Sedey was awarded that amount in 2002 by the United States District Court for the Southern District of Illinois in *Wilfong v. Rent-A-Center*, 2002 U.S. Dist. LEXIS 28016 at *16 (S.D. Ill. October 4, 2002). The same hourly rate was awarded to her in St. Louis County Circuit Court in *Alhalabi v. Mo. Dept. Nat. Resource*, 00CC-101089 (August 25, 2008). Donna Harper and Robert Johnson, who long served as general counsel for the Equal Employment Opportunity Commission and who now practice with Sedey Harper, have been awarded the same hourly rate. Marilyn Teitelbaum, with whom I worked on the BAMSL committee drafting the Eighth Circuit's Model Jury Instructions, received an award of \$400 per hour in 2006 for her work in a First Amendment case brought in Columbia, Missouri. *Wickersham v. City of Columbia, et al*, No. 05-4061-CV-C-NKL (W.D. Mo. Oct. 2, 2006) (Doc. 128). All of these lawyers are considered among the best employment lawyers in the State of Missouri.

5. During the same time period, the hourly rate charged by defense-side employment lawyers was even higher. In 2007, the St. Louis firm of Bryan Cave submitted an affidavit to the United States District Court for the Eastern District of Missouri, Eastern Division, stating that its partners charged up to \$470 per hour in employment litigation. *Finan v. Good Earth Tools, Inc.*, No. 4:06-CV-171 CAS (E.D.Mo., Nov. 21, 2007) (Doc. 110).

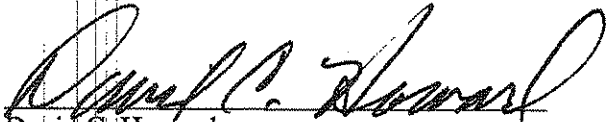
6. There are very few attorneys in the St. Louis area who specialize in employment discrimination law, and even fewer who are willing to accept on behalf of impecunious, often unemployed plaintiffs a contingent fee discrimination case where the risk of non-payment is high. For this reason, recovery of the full market rate is essential to compensate counsel in a reasonable and fair manner.

7. I have known D. Eric Sowers and Ferne P. Wolf for a number of years, and I am familiar with the quality of legal services provided by their law firm, Sowers & Wolf. The hourly rates of \$450 for Mr. Sowers and \$400 per hour for Ms. Wolf are reasonable and consistent with their level of expertise and proficiency, and are fully consistent with both the hourly rates awarded by the Missouri courts and those charged by other attorneys in this area with similar expertise.

8. I have reviewed the hourly billing for Sowers & Wolf, including the detailed billing statements for this case submitted by D. Eric Sowers, Ferne P. Wolf, and M. Beth Fetterman, and I am familiar with the nature of the action herein. It is my opinion that the hours reflected thereon are reasonable and necessary under the circumstances, and the number of hours is lower than would be expected because of their experience and expertise in complex state and federal employment litigation.

I declare under penalty of perjury that the above and foregoing is true and accurate to the best of my knowledge and belief.

3.22.10
Date


David C. Howard